

Add to R18-11-101 Definitions

“Regulated discharge” means a point source discharge regulated under an Arizona Pollutant Discharge Elimination System (AZPDES) permit or a National Pollutant Discharge Elimination System (NPDES) permit, any discharge regulated by an individual, nationwide or regional §404 permit, and any discharge authorized by a federal permit or license that is subject to state water quality certification under §401 of the Clean Water Act.

“Significant degradation” means the consumption of 10 percent or more of the available assimilative capacity of a surface water for a pollutant of concern at critical flow conditions.

“Base pollution control measures” means those water pollution control measures required to meet technology-based requirements of the Clean Water Act and to meet water quality-based limits designed to achieve compliance with applicable water quality standards.

R18-11-107.01 Antidegradation Implementation Procedures

- A. This section applies to a regulated discharge that may degrade existing water quality in a surface water.
- B. A regulated discharge shall not cause a violation of an applicable surface water quality standard in a surface water.
- C. Tier 1 antidegradation protection applies to all surface waters as a minimum level of protection. Tier 1 antidegradation protection requires that the level of water quality necessary to meet applicable water quality standards be maintained and protected.
1. Tier 1 antidegradation protection applies to the following surface waters:
- A surface water listed on the §303(d) list for the pollutant that results in a listing;
 - An effluent dependent water;
 - An ephemeral water;
 - An intermittent surface water; and
 - Canals
2. A regulated discharge shall not cause further degradation of existing water quality in an impaired water identified on the §303(d) list for the pollutant that resulted in the §303(d) listing.
3. Tier 1 antidegradation review requirements are satisfied for a point source discharge to an ephemeral water, effluent dependent water, intermittent water or a to canal that is regulated under an NPDES or AZPDES permit provided water quality-based effluent limitations designed to achieve compliance with applicable water quality standards are established in the permit and applicable technology-based requirements of the Clean Water Act for the point source discharge are met.
- D. Tier 2 antidegradation protection applies to a perennial water with existing water quality that is better than applicable water quality standards. Existing water quality water shall be maintained and protected in a perennial water. A perennial water not listed on the §303(d) list of impaired waters for a pollutant nor classified as an Outstanding Arizona Water is presumed to have Tier 2 antidegradation protection for all pollutants of concern. The Department may allow degradation of existing water quality on a pollutant-by-pollutant basis in accordance with the following.
1. A regulated discharge that results in significant degradation of existing water quality of a perennial water is subject to a comprehensive antidegradation review by the Department.

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2. The Department may allow significant degradation if the Department determines, after public participation and intergovernmental coordination requirements are satisfied, that there are no reasonable, cost-effective, less-degrading or non-degrading alternatives to the discharge and allowing significant degradation is necessary to accommodate important economic or social development in the area where the surface water is located.

3. Under no circumstances may a regulated discharge significantly degrade existing water quality to the level where the discharge causes a violation of an applicable water quality standard.

4. The Department may require a person seeking authorization for a regulated discharge to a perennial water to provide baseline water quality information on pollutants of concern reasonably expected to be in the discharge. The Department will use existing credible data where available to make baseline water quality determinations. Where no data or insufficient data exist to characterize baseline water quality for a pollutant of concern, the person seeking authorization for the regulated discharge will be required to generate and provide the data to characterize baseline water quality to the Department. Baseline water quality shall be characterized at a location immediately upstream of the proposed discharge location.

5. A person seeking authorization for a regulated discharge that will significantly degrade water quality of a Perennial water shall prepare and submit to the Department a written analysis of alternatives to the discharge. The alternatives analysis shall provide information on reasonable, cost-effective, less degrading or non-degrading pollution control alternatives that do not result in significant degradation.

a. An alternatives analysis shall include:

- i. cost information on the base pollution control measures associated with the regulated discharge.
- ii. the treatment costs of all alternatives that produce an effluent that does not result in significant degradation.

b. An alternative is deemed to be cost-effective and reasonable if treatment costs associated with the alternative are less than 110 percent of the cost of base pollution control measures.

c. The Department will require that the alternative or combination of alternatives that results in the least degradation and does not exceed 110 percent of the cost of base pollution control measures be implemented.

6. Where an alternatives analysis shows that the least degrading, cost-effective alternative still results in significant degradation of a perennial water, the person seeking authorization to discharge shall prepare a written statement which demonstrating that significant degradation is necessary to accommodate important social and economic development in the area of the discharge.

7. Public notice of an antidegradation review shall be provided in accordance with the procedures prescribed in A.A.C. R18-9-A907. The Department shall provide an opportunity to comment on the antidegradation review in accordance with the public participation procedures prescribed in A.A.C. R18-9-A908(A). Public hearings on antidegradation reviews shall be conducted in accordance with the public hearing procedures prescribed in A.A.C. R18-9-A908(B). Intergovernmental coordination is required before the Department approves a regulated discharge that will significantly degrade a perennial water.

E. Tier 3 antidegradation protection applies only to Outstanding Arizona Waters listed in R18-11-112 and their tributaries. Existing water quality in an Outstanding Arizona Water shall be maintained and protected.

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1. A new or expanded regulated discharge directly to an Outstanding Arizona Water is prohibited.
2. A regulated discharge to a tributary to or upstream of an Outstanding Arizona Water is allowable, provided the person with planning, managerial or operational control of the regulated discharge demonstrates in a permit application or in other written documentation submitted to the Department that the regulated discharge will not degrade existing water quality in the downstream Outstanding Arizona Water.
3. The Department may allow temporary and short-term changes to existing water quality of an Outstanding Arizona Water on a case-by-case basis. Temporary and short-term changes are defined as those occurring for a period of six months or less.

F. The Department shall conduct the antidegradation review of a regulated discharge authorized by an individual or nationwide §404 permit issued by the U.S. Army Corps of Engineers as part of the §401 water quality certification process. A regulated discharge authorized by a §404 permit that receives §401 water quality certification from the Department is deemed to have satisfied antidegradation requirements provided the discharge is consistent with conditions required by the Department for §401 water quality certification. The Department shall consider Subpart B of the Section 404(b)(1) guidelines in conducting its antidegradation review of an individual §404 permit. The Department shall conduct the antidegradation review for a nationwide §404 permit at the time of permit issuance or re-issuance by the U.S. Army Corps of Engineers. A person seeking authorization to discharge under a nationwide §404 permit that has been certified by the Department under §401 of the Clean Water Act is not required to undergo separate antidegradation review at the time of submittal of the Notice of Intent to be covered by a nationwide permit except where a person seeks authorization to discharge to an Outstanding Arizona Water. A discharge regulated under a nationwide §404 permit that may affect water quality of an Outstanding Arizona Water requires an individual §401 water quality certification to ensure that the water quality impacts are temporary.

G. The Department shall conduct an antidegradation review of an individual municipal separate storm sewer system (MS4) permit by reviewing a permittee's storm water pollution prevention plan. An individual permit for an MS4 or industrial facility is presumed to meet antidegradation requirements if the permittee develops a storm water pollution prevention plan containing controls to reduce the level of pollutants in storm water discharges to the maximum extent practicable, including best management practices, control techniques, prohibitions against illicit discharges, engineering methods, and a monitoring program designed to provide information and data to identify pollutants of concern in storm water discharges. The monitoring program shall be sufficient to provide information and data to evaluate the effectiveness of the storm water pollution prevention plan in reducing levels of pollutants of concern and to support appropriate revision of the storm water pollution prevention plan or storm water permit in future permit cycles, as necessary, to improve storm water quality. A person seeking authorization to discharge under a general storm water permit, including a construction general permit, multi-sector industrial general permit or Phase II municipal general permit, is not required to undergo separate antidegradation review at the time of submittal of the Notice of Intent to be covered by a general permit except where a person seeks authorization to discharge to an Outstanding Arizona Water. The Department shall conduct an antidegradation review for a proposed storm water discharge to an Outstanding Arizona Water. The review shall be as identified above for individual MS4 or industrial facilities.

H. The Department shall conduct the antidegradation review of a regulated discharge authorized by a surface water general permit for the entire class of discharges covered by the surface water general permit at the time a surface

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water general permit is issued or renewed. A person seeking authorization to discharge under a surface water general permit is not required to undergo separate antidegradation review at the time of submittal of the Notice of Intent to be covered by the surface water general permit except where the discharge may affect water quality of an Outstanding Arizona Water. Any discharge authorized by a surface water general permit that may affect water quality of an Outstanding Arizona Water requires an individual antidegradation review by the Department to ensure that the water quality impacts to the Outstanding Arizona Water are temporary.

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A regulated discharge shall not cause a violation of an applicable surface water quality standard in a surface water.

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Alternatives may include, but are not limited to, wastewater treatment process changes or upgrades, pollution prevention measures, source reduction, wastewater reuse, alternative discharge locations, groundwater recharge, land application or treatment, local pretreatment programs or improved operation and maintenance of existing systems, and seasonal or controlled discharge to avoid critical flow conditions.

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. Base pollution control measures are those water pollution control measures required to meet technology-based requirements of the Clean Water Act and to meet water quality-based limits designed to achieve compliance with applicable water quality standards. [lc11]

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(that is, does not consume more than 10 percent of the available assimilative capacity for a pollutant of concern.[lc12]

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The Department shall provide public notice and an opportunity to comment to the following persons:

- a. U.S. Environmental Protection Agency, Region 9;

- b. U.S. Fish & Wildlife Service;
- c. Any affected federal public land manager, including U.S. Forest Service, Bureau of Land Management, and National Park Service;
- d. Any affected state agency, including the Arizona Game & Fish Department, Department of Water Resources, State Land Department, and Arizona State Parks;
- e. Any affected Indian tribe;
- f. Any affected local agency, including a county Department of Health or Department of, Environmental Services;
- g. Any affected Council of Government;
- h. Arizona Historic Preservation Office
- i. U.S. Army Corps of Engineers
- j. the Secretario de Medio Ambiente y Recursos Naturales and the U.S. Section of the International Boundary and Water Commission if the discharge affects the border between Arizona and Mexico.
- k. Any person who requests public notice in writing.

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E[1c13]. The Department shall conduct the antidegradation review of a regulated discharge authorized by an individual Or nationwide §404 permit issued by the U.S. Army Corps of Engineers as part of the §401 water quality certification process. A regulated discharge authorized by a §404 permit that receives §401 water quality certification from the Department is deemed to have satisfied antidegradation requirements provided the discharge is consistent with §404(b)(1) guidelines and the permittee complies with the conditions of the §404 permit and any[1c14] conditions required by the Department for §401 water quality certification. The Department shall conduct the antidegradation review for a nationwide §404 permit at the time of permit issuance or re-issuance by the U.S. Army Corps of Engineers. A person seeking authorization to discharge under a nationwide §404 permit that has been certified by the Department under §401 of the Clean Water Act is not required to undergo separate antidegradation review at the time of submittal of the Notice of Intent to be covered by a nationwide permit except where a person seeks authorization to discharge to an Outstanding Arizona Water. A discharge regulated under a nationwide §404 permit that may affect water quality of an Outstanding Arizona Water requires an individual §401 water quality certification to ensure that the water quality impacts are temporary.

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